HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT APPEAL NO. 426 OF 2006

Between:
The Executive Officer,
Tirumala Tirupathi Devasthanams,
Tirupati.

... Appellant

And

B. Satyanarayana & another

... Respondents

:: JUDGMENT::

Counsel for the Appellant : Shri M. A. K. Jayaprakash Rao

Counsel for Respondent No.1 : Shri V. Jagapathi

Counsel for Respondent No2 : Government Pleader for Revenue

Dated: 19.06.2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 07.02.2006 passed by the learned Single Judge in Writ Petition No.26749 of 1999 whereby he directed the appellant to consider the case of writ petitioner (respondent No.1 herein) for regularization of service.

Respondent No.1 B. Satyanarayana was engaged as Watchman with effect from 15.11.1986 at Tirumala Tirupathi Devasthanams Kalyanamandapam at Manchiryal in Adilabad District. His engagement was discontinued with effect from 13.09.1988. Writ Petition No.5975 of 1989 filed by him questioning the termination of his service was dismissed by the learned Single Judge on the ground of availability of alternative remedy under the Industrial Disputes Act, 1947 (for short 'the Act').

Armed with the observations made by this Court, respondent No.2 filed an application under Section 2-A(2) of the Act, as amended by Andhra Pradesh Act No.32 of 1987. He pleaded for invalidation of employer's action to terminate his service on the ground of violation of Section 25-F of the Act. The application filed by respondent No.1 was registered as I.D.No.172 of 1992. In the counter filed on behalf of the appellants, who had been impleaded as parties to the application of respondent No.1, it was admitted that he was engaged as Watchman but his assertion that the termination of his service was illegal was denied. According to the appellants, respondent No.1 had been engaged as a casual labourer for watching the construction of building and his service was discontinued on completion of the project. Respondent No.1 appeared in the witness box and reiterated the averments contained in his application. He claimed that he was engaged as Watchman from 15.02.1986 to 13.09.1988, but was paid wages from November

1986 to the end of January and for the rest of the period no wages were paid. He further claimed that his services were terminated orally on 23.09.1989 and by that time he had worked for more than 240 days. The appellants did not adduce any evidence, oral or documentary to controvert the statement of respondent No.1. Therefore, by taking into consideration the un-controverted statement made by respondent No.1, the Chairman-cum-Presiding Officer of the Tribunal passed award dated 09.11.1994, paragraph 8 of which reads as under:

> "In the result, 'Award' is passed partly-allowing the petition but without costs and the petitioner is ordered to be appointed as "Casual-Labourer" and he should be paid his wages of salary for the period from February 1988 to 13.09.1988 at the rate he was being paid while he was in service or working.
>
> a) Award shall come into force after thirty (30) days of the publication of the 'Notification' issued by the Government.
>
> b) Within thirty (30) days of its publication, the petitioner should approach the respondent with a request to issue "Order of Appointment and Posting" and payment of the salary for the period referred to above.
>
> Note:- The request should be made in writing and the letter should be sent in Regd. post Ack. due maner only and in no other manner.
>
> c) If he i.e. the petitioner does not act and does not approach the respondent in time and in the manner as stated above, the petition shall be deemed to have been dismissed and be need not be appointed.
>
> d) The petitioner would be entitled to his salary and attendant benefits from the date of his actually reporting for duty, subsequent to the receipt of "Order of Appointment and Posting".

Two of the functionaries of the appellant challenged the award of the Tribunal in Writ Petition No. 16433 of 1995, which was

dismissed by the learned Single Judge on 25.01.2006. Writ Appeal No. 503 of 2006 filed against the order of the learned Single Judge has been dismissed today by a separate judgment. Respondent No.1 also filed Writ Petition No.1780 of 2006 questioning the award of the Tribunal insofar as he was not given relief of reinstatement with full back wages. That petition was dismissed as withdrawn.

In Writ Petition No.26749 of 1999, respondent No.1 claimed regularization of service by contending that his case is covered by the policy contained in G.O.Ms.No.390 dated 06.05.1991. In the counter affidavit filed on behalf of the appellant, it was averred that in compliance of the direction given by the Tribunal, respondent No.1 became entitled to be reappointed and, as such, he is not entitled to be regularized in service. Reliance was also placed on the ban imposed by the Government on fresh recruitment and it was averred that in that view of the matter, the services of writ petitioner (respondent No.1) cannot be regularized. Another plea taken on behalf of the appellant was that writ petitioner had not completed minimum five years service as on 25.11.1993 and, therefore, his services cannot be regularized.

Although the order under challenge does not, in terms, makes a mention of the limited scope of judicial review of an award made by the Tribunal, it can reasonably be presumed that while declining to entertain the appellants' prayer for setting aside the award, the learned Single Judge must be conscious of the fact that in exercise of power vested in it under Article 226 of the constitution of India, the High Court will interfere with the award of the Tribunal unless it is shown to be without jurisdiction or vitiated due to violation of rules of natural justice or there is an error of law apparent on the face of the record.

It is settled law that a writ of certiorari can be issued against an order passed by the Subordinate Court or Tribunal or a quasi-judicial authority if the same is without jurisdiction or is in excess of the jurisdiction or is violative of the rules of natural justice or is vitiated by an error of law apparent on the face of the record. To put it differently, the High Court can issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ Court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ Court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S. Radhakrishnan**[1] the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior

courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[2] their Lordships of the Supreme Court, while dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

> "Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **Jitendra Singh Rathor v. Shri Baidyanath Ayurve Bhawan Ltd.**[3], the Supreme Court considered the question wheth in exercise of power under Article 227, the High Court can interfere wi the discretion exercised by the Tribunal under Section 11-A of the A and observed :

> "Under Section 11-A wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Article 227 of the Constitution does not enjoy such power though as a superior Court, it is vested with the right of superintendence. It is entitled to scrutinize the orders of the subordinate tribunals within the well-accepted limitations and, therefore, it can in an appropriate case quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. But it is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal or substitute one finding for another and similarly one punishment for another, as in the case of an appeal where it lies to it."

In **R.S. Saini v. State of Punjab and others**[4] the Supreme Court upheld the order passed by the High Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

> "The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

The proposition laid down in **Sayed Yakoob[1] (supra)** has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**[5]

In **Surya Dev Rai v. Ram Chander Rai**[6]**,** the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

> i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two

jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

In our considered view, on the basis of the material available before it, the Tribunal rightly concluded that the services of the workman, who had completed 240 days service in preceding twelve months, could not have been terminated without complying with the mandatory provisions of Section 25-F of the Act. **In State of Bombay v. Hospital Mazdoor Sabha**[7], **State Bank of India v. N.Sundara Money**[8], **Santhosh Gupta v. State Bank of Patiala**[9], **Mohanlal v. Management of Bharat Electronics Limited**[10], **S.K. Varma v. Industrial Tribunal-cum-Labour Court**[11] **and L. Robert D'souza v. Executive Engineer, Southern Railway**[12], it has been consistently held that once an employee is shown to have worked for 240 days in a period of twelve months preceding the

termination of his services, the provisions of Section 25-F(a) and (b) of the Act gets attracted and if the employer terminates the services of such employee by an overact action or omission without giving him one month notice or pay in lieu thereof and retrenchment compensation at the rate of 15 days of average pay, the action of the employer is liable to be treated as nullity and the consequences of such declaration is that the employer will be deemed to have continued in service without interruption.

The description of respondent No.1 as a casual labourer in the counter filed on behalf of the appellants before the Tribunal as also in the writ petition is quite misleading because, as a matter of fact, he had continuously worked from 1986 to 1988. Therefore, he could, at the best, be treated as a temporary or daily-wage employee and his case clearly falls within the definition of the term 'workman' under Section 2(s) of the Act. That apart, even if he was to be treated as casual employee, his case would fall within the definition of 'workman' – **L. Robert D'souza v. Executive Engineer, Southern Railway**(supra).

The learned Single Judge took cognizance of the statement made by learned counsel for the writ petitioner that his client is willing to forego the arrears prior to the date of regularization and disposed of the writ petition by directing the appellant to consider his case for regularization of service. The reasons assigned by the learned Single Judge for entertaining the plea of respondent No.1 for regularization of services are discernible from the following extracts of the order under challenge:

> " A perusal of G.O.Ms.No.390, dated 06.05.1991,would make it clear that all those employees, who were engaged as NMRs/Casual Labour/Consolidated Pay/Daily Wages etc., during the period from 01.04.1984 to 31.03.1988 were

regularized in the service of TTD. It is also not in dispute that the petitioner was initially appointed as a casual watchman on 15.11.1986 and continued to serve the TTD till his services were dis-continued with effect from 13.09.1988. Since the petitioner was also among those employees, who served the TTD as casual labour during 01.04.1984 to 31.03.1988, he would fall within the category of employees, who were given the benefit of regularization under G.O.Ms.No.390, dated 06.05.1991. The fact, however, remains that despite others, similarly situated to the petitioner and who had worked during the period 01.04.1984 to 31.03.1988, being regularized in service, the petitioner was not regularized nor was sanction accorded by the Government for creation of a post to regularize his services. The award of the Tribunal does not also confer on him the benefit of deeming provision in Section 25-F of the Industrial Disputes Act, where on reinstatement being directed, an employee is deemed to be in continuous service of the employer with effect from the date of his termination itself.

The award of the Tribunal mandates the TTD to appoint the petitioner as a casual labourer and, in fact, the first respondent has so appointed him with effect from 25.06.1997. It is well settled that no person can be continued as a casual labour indefinitely and since the petitioner, under the award of the Tribunal which has now been upheld by this Court, was in service for more than eight years, the 1st respondent is required to consider his case in the available vacancies, more so, since persons similarly situated to him have been regularized under G.O.Ms.No.390 dated 06.05.1991."

The operative part of the order passed by the learned Single Judge also reads as under:

"Recording the submission of Sri V. Jagapathi that the petitioner would forego arrears of salary/wages, I

consider it appropriate, in the peculiar facts and circumstances of this case, to direct the respondents to consider the case of the petitioner for regularization in the vacancies, which are either available or which may arise in the near future. Needless to state that the petitioner shall be entitled for regular scales of pay in the regular post only from the date of his regularization and not prior thereto. Till this exercise is completed by the respondents, the petitioner shall be continued in service as a casual labourer in terms of the award of the Tribunal in I.D.No.172 of 1992 dated 09.12.1994. The interim order passed by this Court, directing that he shall be paid the minimum in the time scale of pay applicable to the post of Watchman, shall also continue till then."

We have heard learned counsel for the parties and carefully perused G.O.Ms.No.390 dated 06.05.1991 vide which the State Government approved the proposal of the appellant for absorption of NMRs/casual labourers and others. That G.O. makes a reference to an earlier G.O.Ms.No.296 Revenue (Endts.III) Department dated 19.04.1988 whereby the State Government permitted the appellant to regularize the services of 1135 persons engaged as NMRs/causal labourers etcetera. G.O.Ms.No.390 makes a reference to another proposal sent by the appellant for regularization of services of the persons, who were employed as NMRs, casual labourers, daily wagers and on consolidated wages during the period from 01.04.1984 to 31.03.1988. The Government accepted the proposal and granted permission to the appellant to absorb NMRs and others employed during that period. For the sake of ready reference, paragraphs 3 to 6 of G.O.Ms.No.390 dated 06.05.1991 are reproduced below:

" The Government after careful consideration of the proposals of the Executive Officer, Tirumala

Tirupathi Devasthanams, accord sanction for creation of 1515 posts (1351 + 164) in various categories in TTDs so as to enable him to absorb the persons working as NMRs/Casual Labour/Consodidated Pay/Daily wages etc., during the period from 01.04.1984 to 31.03.1988 in regular establishment for regularization of their services and also to make good the shortage of posts pertaining to SC and ST communities.

The Government also direct that the service of 1351 persons mentioned in para 3 above be regularized in relaxation of the Employment Exchange Procedure and also the Rule of Reservation as required under the rules of the Government.

The Government also further direct that the 164 posts sanctioned in para (3) above shall be filled-up by SCs and STs in the required percentage allocable upto each community by following the relevant rules and procedure.

The Executive Officer, Tirumala Tirupathi Devasthanams is requested to take immediate further necessary action in the matter and furnish a copy of the orders issued by the Tirumala Tirupathi Devasthanams for information and record of the Government."

The appellant has not controverted the fact that in furtherance of the policy decision taken by the State Government, which is reflected in G.Os.No.390, the services of large number of NMRs., casual labourers, daily wagers and others who had been working during the period from 01.04.1984 to 31.03.1988 were regularized. This means that if services of respondent No.1 had not been terminated in September 1988, then his services would have also been regularized or he would have been absorbed in the regular establishment of the appellant.

In our opinion, after his re-employment in the services of the

appellant, respondent No.1 became entitled to be considered for absorption in the regular establishment in terms of G.O.Ms.No.390 and failure of the concerned authority of the appellant to take action in that regard resulted in violation of his fundamental right to equality guaranteed under Articles 14 and 16 of the Constitution. Therefore, the learned Single Judge did not commit any error by directing the appellant to regularize the services of respondent No.1 against the available vacancies or the one which may become available in future and the appeal is liable to be dismissed. Ordered accordingly.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY,J

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19.06.2006

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[1] AIR 1964 SC 477
[2] AIR 1970 SC 61
[3] (1984) 3 Supreme Court Cases 5
[4] JT 1999 (6) SC 507 = (1999) 8 SCC 90
[5] JT 2002 (8) SC 69 = (2002) 9 SCC 375
[6] AIR 2003 SC 3044
[7] AIR 1960 SC 610

[8] AIR 1976 SC 1111
[9] (1980) 3 SCC 340
[10] AIR 1981 SC 1253
[11] AIR 1981 SC 422
[12] AIR 1982 SC 854